

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 881 - HB 1260

March 24, 2017

SUMMARY OF BILL: Enhances intentional and reckless aggravated assault offenses involving the use or display of a deadly weapon one classification if committed by discharging a firearm from within a motor vehicle and requires the defendant's driver license to be revoked for one year following any period of confinement. Authorizes seizure and forfeiture of the motor vehicle used in commission of the offense.

Enhances reckless endangerment two classifications if committed by discharging a firearm from within a motor vehicle and requires the defendant's driver license to be revoked for one year to begin following any period of confinement. Authorizes seizure and forfeiture of the motor vehicle used in commission of the offense.

ESTIMATED FISCAL IMPACT:

Increase State Revenue – \$900/FY21-22 and Subsequent Years/Department of Safety

Increase State Expenditures – \$2,684,400/Incarceration*

Other Fiscal Impact – The proposed legislation could increase state or local forfeiture revenue; the extent and timing of any such increases cannot be reasonably determined.

Assumptions:

Enhancement of Intentional or Knowing Aggravated Assault Offenses

- Tennessee Code Annotated § 39-13-102(a)(1)(A)(iii) prohibits a person from intentionally or knowingly committing an assault that involved the use or display of a deadly weapon. The proposed legislation enhances such an offense from a class C felony to a class B felony if committed by discharging a firearm from within a motor vehicle.
- For example, a person could intentionally or knowingly discharge a firearm from within a motor vehicle toward a group of people. If any person from that group reasonably feared imminent bodily injury, then the defendant's offense would be enhanced to a class B felony.
- Statistics from the Department of Correction (DOC) show an average of 999 admissions per year for aggravated assault. However, these statistics include offenses under Tenn.

Code Ann. § 39-13-102(a)(1)(A)(i)-(iv). It is assumed that 25 percent ($999 \times 0.25 = 250$ admissions) of these admissions involved the use or display of a deadly weapon.

- Further, it is assumed that 10 percent ($250 \times 0.1 = 25$ admissions) of aggravated assault admissions involving a deadly weapon also involve discharge of a firearm from within a motor vehicle.
- Data from the DOC indicates the average time served for intentional or knowing aggravated assault is 3.16 years. The average time served for a class B felony is 6.32 years.
- The proposed legislation will result in each offender serving an additional 3.16 years (6.32 years – 3.16 years).
- According to the DOC, the average operating cost per offender per day for calendar year 2017 is \$68.75.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for three ($25 \times .1178$) additional admissions for a total of 28 ($25 + 3$).
- According to the DOC, 48.6 percent of offenders will re-offend within three years of their release. A recidivism discount of 48.6 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($28 \text{ offenders} \times .486 = 14 \text{ offenders}$).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 14 offenders ($28 \text{ offenders} - 14 \text{ recidivism discount}$) serving an additional 3.16 years (1,154.19 days) at a cost of \$79,351 ($\$68.75 \times 1,154.19 \text{ days}$) per offender. The cost for 14 offenders is \$1,110,914 ($\$79,351 \times 14$).

Enhancement of Reckless Aggravated Assault Offenses

- Tennessee Code Annotated § 39-13-102(a)(1)(B)(iii) prohibits a person from recklessly committing an assault that involved the use or display of a deadly weapon. The proposed legislation enhances such an offense from a class D felony to a class C felony if committed by discharging a firearm from within a motor vehicle.
- For example, a person could recklessly discharge a firearm from within a motor vehicle in no particular direction. If any person suffers bodily injury, then the defendant's offense would be enhanced to a class C felony.
- Statistics from the DOC show an average of 141.6 admissions per year for aggravated assault. However, these statistics include offenses under Tenn. Code Ann. § 39-13-102(a)(1)(B)(i)-(iii). It is assumed that 25 percent ($141.6 \times 0.25 = 35.4$ admissions) of these admissions involved the use or display of a deadly weapon.
- Further, it is assumed that 10 percent ($35.4 \times 0.1 = 3.54$ admissions) of aggravated assault admissions involving a deadly weapon also involve discharge of a firearm from within a motor vehicle.
- Data from the DOC indicates the average time served for reckless aggravated assault is 2.02 years. The average time served for a class C felony is 3.51 years.

- The proposed legislation will result in each offender serving an additional 1.49 years (3.51 years – 2.02 years).
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not impact these admissions.
- According to the DOC, 33.2 percent of offenders will re-offend within one year of their release. A recidivism discount of 33.2 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (4 offenders x .332 = 1 offender).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on three offenders (4 offenders – 1 recidivism discount) serving an additional 1.49 years (544.22 days) at a cost of \$37,415 (\$68.75 x 544.22 days) per offender. The cost for three offenders is \$112,245 (\$37,415 x 3).

Enhancement of Reckless Endangerment Offenses

- Reckless endangerment is conduct that places or may place another person in imminent danger of death or serious bodily injury.
- Tennessee Code Annotated § 39-13-103 punishes reckless endangerment as a class C felony if the offense is committed by discharging a firearm into an occupied habitation. The proposed legislation creates three new class C felony reckless endangerment offenses if the offenses are committed by discharging a firearm (1) into a group of five or more people, (2) from within a motor vehicle, or (3) into a motor vehicle.
- Statistics from the DOC shows an average of 134.4 admissions per year for reckless endangerment committed with a deadly weapon, a class E felony. The proposed legislation will enhance some of these admissions to class C felonies.
- It is assumed that 10 percent (13.4 admissions) are committed by discharging a firearm from within a vehicle, 10 percent (13.4 admissions) are committed by discharging a firearm into a motor vehicle, and five percent (6.7 admissions) are committed by discharging a firearm into a group of five or more people.
- Statistics from the DOC show the average time served for class E felony reckless endangerment involving a deadly weapon is 0.98 years. There is insufficient data to determine the average times served for class C felony reckless endangerment for discharging a firearm into an occupied habitation. Therefore, the average time served for class C felonies, 3.51 years, will be used.
- The proposed legislation will result in each offender serving an additional 2.53 years (3.51 - 0.98).
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for two (13.4 x .1178) additional admissions for discharging a firearm from within a motor vehicle totaling 15 (13 + 2) admissions.

- Population growth will account for two ($13.4 \times .1178$) additional admissions for discharging a firearm into a motor vehicle totaling 15 ($13 + 2$) admissions.
- Population growth will account for one ($6.7 \times .1178$) additional admission for discharging a firearm into a group of five or more people totaling eight ($7 + 1$) admissions.
- According to the DOC, 43.1 percent of offenders will re-offend within two years of their release. A recidivism discount of 43.1 percent has been applied to these estimates to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law.
- The recidivism discount will reduce admissions by six admissions (15×0.431) for discharging a firearm from within a motor vehicle, by six admissions (15×0.431) for discharging a firearm into a motor vehicle, and by three admissions (8×0.431) for discharging a firearm into a group of five or more people.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 23 offenders (38 offenders – 15 recidivism discount) serving an additional 2.53 years (924.08 days) for a total of \$63,531 ($\68.75×924.08 days). The cost for 23 offenders is \$1,461,213 ($\$63,531 \times 23$).

Total Increase in Incarceration Costs

- The proposed legislation will increase state incarceration costs by a total of \$2,684,372 ($\$1,110,914 + \$112,245 + \$1,461,213$).

Revocation of Offenders' Driver Licenses

- In addition to enhancing the felony classifications of the above offenses, the proposed legislation requires the revocation of the driver license of each person convicted under the proposed legislation for one year to begin following any period of confinement imposed.
- There is no reinstatement fee set for these revocations. It is assumed that the Department of Safety (DOS) will charge the \$65 reinstatement fee set forth in Tenn. Code Ann. § 55-12-129(b).
- It is assumed 42 defendants (25 for intentional or knowing aggravated assault, 4 for reckless aggravated assault, and 13 for reckless endangerment) have their licenses revoked upon serving a period of confinement.
- The offenses involved have varying average times served and varying increases to the average time served. The earliest one of the affected offenders is likely to be released is approximately four years.
- It is assumed that one-third (14 defendants) of the defendants will be released, and the first reinstatement fees collected by the DOS, beginning in FY21-22.
- The proposed legislation will increase recurring state revenue by \$910 ($\65×14) beginning in FY21-22.
- Pursuant to Tenn. Code Ann. § 55-12-129(e), this increase in recurring revenue shall remain with the Driver License Division of the DOS to offset the cost of administration for the division.

Forfeiture of Offenders' Motor Vehicles

- The proposed legislation authorizes the seizure and forfeiture of the motor vehicle used in the commission of the offenses enhanced under the proposed legislation.
- This provision could increase recurring state and local forfeiture revenue. However, due to multiple unknown variables such as the value of the motor vehicle, whether the seizing agency is a state or local agency, and the number of vehicles seized; the increase in revenue cannot be reasonably determined.

Impact to Courts, Public Defenders, and District Attorneys

- The proposed legislation does not create any new offenses, but rather enhances existing offenses. It is assumed that the courts, public defenders, and district attorneys can accommodate any impact to the workload within their existing resources.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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